United States Circuit Court of Appeals for the Ninth Circuit

GEORGE E. JACKSON, Doing Business Under the Trade Name and Style of SOUTHERN ARIZONA AUTO COMPANY,
Plaintiff in Error,
v.
THE UNITED STATES OF AMERICA,
Defendant in Error.

No. 4046

Opening Brief of Plaintiff in Error

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THE ARIZONA PRINTERS, INC.

UNITED STATES
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OPENING BRIEF OF PLAINTIFF IN ERROR

STATEMENT OF THE CASE

In this proceeding while pending in the lower Court, on October 2nd, 1922, the plaintiff in error filed his petition in intervention consisting of a third party claim to a certain Hudson touring automobile, claiming the automobile as conditional vendor and asking that it or the proceeds thereof, after sale, be turned over to him for the reason that he had no knowledge that the automobile was used or was to be used in the unlawful transportation of liquor. The petition was verified by

intervener and upon the same day it was filed a copy thereof was served upon the Assistant United States Attorney for the District of Arizona, in which the proceeding to confiscate and sell the automobile was pending (T. of R. 23.) On January 4th, 1923, an information was filed against J. A. Bostick, who, as it will presently appear was the conditional vendee of said automobile, the second count of which said information charged that the defendant was guilty of unlawful transportation of liquor in the automoible in question. (T. of R. 2.) This information was the result of a previous arrest of said J. A. Bostick and seizure of said automobile, which was then being used by said defendant for the transportation of intoxicating liquor. (T. of R. 10, 24.) Subsequently said Bostick pleaded guilty to said charge of unlawful transportation of liquor (T. of R. 7) and was fined the sum of $500.00. (T. of R. 5.) On March 15th, 1923, the verified petition of plaintiff in error by way of third party claim came on for hearing. The United States Attorney appeared for the government and no one appeared for the petitioner. Thereupon the verified petition was submitted and by the Court taken under advisement. (T. of R. 8.) It is a plain inference from the record and is a fact which will not be denied by the United States Attorney that Judge Dooling assumed for the purpose of hearing

and decision that the allegations of plaintiff's verified petition were true. As stated in the record the *petition* was submitted and by the Court taken under advisement. (T. of R. 8.) On April 20th, 1923, Judge Dooling filed a written opinion and order denying the petition of the intervener and requiring a sale of the said automobile in the usual manner. On May 23rd, 1923, Judge Dooling, at the request of plaintiff, added to said opinion and order a notation that "The Court now finds as a fact that plaintiff had no knowledge that the automobile was used or was to be used in the unlawful transportation of liquor." Because it plainly appears from the submission of the verified petition as such to the Court and from the opinion and special finding in connection therewith that the allegations of plaintiff's verified petition were assumed by the Court to be true, we now refer briefly to the facts as alleged in said petition which were deemed insufficient by the Court to constitute a valid basis for relief. (T. of R. 13.)

(Throughout the remainder of this brief we will refer to plaintiff in eror as the plaintiff and to defendant in error as the defendant.)

Plaintiff is and was at all times mentioned doing business as a retail automobile dealer

under the trade name of Southern Arizona Auto Company, with his principal place of business in the City of Douglas, State of Arizona. On April 6th, 1922, plaintiff sold the automobile in question, a Hudson touring car, by a conditional sales contract containing the usual provisions (T. of R. 19), to the said Bostick for the sum of $700.00, of which amount the sum of $150.00 was paid on the date of the contract. The automobile was delivered to Bostick on the date of the contract and a few days thereafter he was arrested for the unlawful transportation of liquor in said machine. The transportation of intoxicating liquor was done without the knowledge, consent or connivance of plaintiff, or of any employee, servant or agent of plaintiff. After the seizure of the automobile by the authorities Bostick defaulted in his payments and plaintiff elected to re-take possession in accordance with the terms of the contract, and as owner of the legal title to said automobile, offering to pay any just charges for storage and other costs and expenses that might be required of him by the Court.

After denial of plaintiff's third party claim plaintiff filed a petition for a writ of error, (T. of R. 30), and perfected proceedings resulting in issuance of writ of error on May 26th, 1923, by the Honorable Wm.

H. Sawtelle, United States Judge for the District of Arizona. (T. of R. 36.)

ASSIGNMENT OF ERROR

That the Court erred in denying the petition of the intervener, plaintiff herein, and in ordering the automobile involved in these proceedings sold without recognition of any right of plaintiff to a return of the same, or in or to any of the proceeds thereof, notwithstanding the fact that the Court found that the intervener was the conditional vendor of said automobile, and had no knowledge that said automobile was used or was to be used in the unlawful transportation of liquor, (T. of R. 32) and vacated proceedings resulting in issuance of writ of error on May 26th, 1923, by the Honorable William H. Sawtelle, United States Judge for the District of Arizona. (T. of R. 36.)

ARGUMENT

In view of the uncontroverted facts of this case the main question presented is this: Is the interest of a conditional vendor of an automobile subject to forfeiture when the automobile is seized by the government while

the vendee is using the machine for illegal transportation of liquor, notwithstanding the vendor was without notice of any such use or intended use of the automobile? This question is one of great practical importance, especially to the District of Arizona. Large selling agencies of automobiles in that state as well as the Federal authorities have been subjected to uncertainty and confusion by directly conflicting decisions by two different judges in the same District. Irreconcilably opposed to the decision of Judge Dooling, sitting in the place of Judge Sawtelle, at Tucson, in the instant case, is the late decision at Phoenix, rendered April 30th, 1923, by Judge Fred C. Jacobs, newly appointed Federal District Judge for Arizona, who held in the case of U. S. v. Addington, C 1748 in favor of the Eisenhour Bradley Motor Company, as intervener that since petitioner was without notice that the vehicle was being used or was to be used for illegal transportation of liquor the car must be sold and the proceeds of the sale should first be used after payment of costs, to pay the claim of intervener, the balance, if any, to be paid into the treasury of the United States.

Section 26 of the National Prohibition Law provides:

> "Whenever intoxicating liquors transported or possessed illegally shall be

> seized by an officer he shall take possession of the vehicle and team or automobile * * * and shall arrest any person in charge thereof. The Court upon conviction of the person so arrested shall order the liquor destroyed, and unless good cause to the contrary is shown by the owner, shall order a sale by public auction of the property seized * * * shall pay all liens, according to their priority, which are established as being bona fide and as having been created without the lienor having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor."

Judge Dooling, in his opinion in the lower Court, assumed without discussion that the intervener as conditional vendor is the "owner" of the automobile in question, rather than a "lienor" within the meaning of the Prohibition Act and based his entire opinion on that assumption, denying the petition of intervener accordingly and making no provision for payment of our claim for the unpaid purchase price. In this assumption we believe Judge Dooling to have been entirely in error. We submit that within a fair interpretation of the Act and the obvious purpose to be accomplished, the conditional vendee is to be regarded as the owner and the conditional vendor a lienor.

Words in a statute are not necessarily to be confined to their ordinary meaning. As was forcefully stated by the Circuit Court of Appeals, Second Circuit, in the case of Scandinavia Belting Co. v. Asbestos, etc., Works of America, 257 Fed. 937, 954, during the course of an opinion interpreting the word "owner" used in a statute: "It is an established rule governing the construction of statutes that they are to have a rational and sensible interpretation. The object which the legislative body sought to attain and the evil which it endeavored to remedy may always be considered to ascertain its intention, and to interpret its act. United States v. Ninety Nine Diamonds, 139 Fed. 961, 72C. C. A. 9, 2 L. R. A. (N. S.) 185. And in Maxwell on the Interpretation of Statutes (4th Ed.) p. 101 the rule is laid down that—'Even where the usual meaning of the language falls short of the whole object of the Legislature, a more extended meaning may be attributed to it if fairly susceptible of it.'" In the same opinion the Court quotes (p. 954) with approval the following language from Carter v. Bolster, 122 Mo. App. 135, 141, 98, 105, 106: "The word 'property' as well as 'owner' may be used to convey a meaning sometimes broad and sometimes quite restricted."

Doubtless in its commonly accepted sense the word "owner" means only the person who

holds legal title. But in various statutes and different connections the word has been given various meanings. In a long foot note contained in 29 Cyc. 1550 are gathered numerous decisions giving the word "owner" a much broader meaning so as to include among others, equitable owner, lessee, one in possession of a dwelling house under a valid and subsisting contract of purchase, one who has an interest in land for years, for life or any greater estate, freehold, in reversion or remainder, etc. Also in Lefevre v. Chamberlain, 228 Mass. 346, 117 N. E. 325 a conditional vendee was held to be the "owner" within the meaning of a statute providing for the registration of automobiles, the opinion citing an earlier decision holding that "owner" included bailees, mortgagees in possession and vendees under conditional contracts of sale who have acquired a special property which confers ownership as between them and the general public for the purpose of registration. The same rule of liberal interpretation as enunciated in the Scandinavia Belting Co. case, supra, by the Circuit Court of Appeals of the second circuit, applies with equal force to the interpretation of the word "lienor" in the Act in question.

The only decision which we can find with reference to the precise point here in issue involving an interpretation of the provisions of

the Prohibition Act now in question with reference to the right of an innocent conditional vendor is found in the case of United States v. Sylvester, 273 Fed. 253. In that decision District Judge Thomas of Connecticut sustained the right of an innocent conditional vendor after seizure of an automobile used in illegal transportation of liquor and held that the claim of such a vendor to the unpaid purchase price should be satisfied out of the proceeds of the sale of the car. The Court in that case concluded that an innocent conditional vendor was a lienor entitled to reimbursement; that the obvious purpose of the act is to punish wrong-doers and to protect the interest of all innocent persons. We refer to the Sylvester case as an admirable interpretation of the statute in its various applications.

We submit that so far as the Act in question is concerned the conditional vendee, not the conditional vendor, should be held to be the "owner" of the automobile. It is the vendee who has the substantial dominion over the property and beneficial enjoyment of it subject only to certain restrictions imposed by contract. If he is not the owner no protection whatever is afforded an innocent conditional vendee whose automobile may have been loaned to a friend, rented for a brief period or surreptitiously taken by a wrong-doer for illegal transportation of liquor. Sure-

ly the vendee is the owner in all conditional sales and it is he instead of the vendor who is entitled to show "reasonable cause to the contrary" and thus prevent the sale of the car and procure its return to himself. Otherwise an innocent conditional vendee is utterly without protection and no court has even any discretion to afford him relief no matter how nearly he may have paid for the automobile. The return of the car to such an innocent vendee would not forfeit the interest of any other person nor deprive the Government of any proceeds to which it might be entitled. On the other hand, we submit that the conditional vendor is a "lienor" within the fair intendment of the statute. He has no possession, no beneficial enjoyment, no control of the use of the car in the hands of third persons. His only interest is very little more than that of a mortgagee. In referring, at the conclusion of his opinion, to the exercise of his supposed discretion against a conditional vendor on the ground of the presumed harshness of any conditional sales contract with its forfeiture clause, Judge Dooling overlooked the fact that in the State of Arizona as in several other states the "Uniform Conditional Sales Law" has been adopted. Arizona Session Laws 1919, Chap. 40 (Senate Bill No. 64). In this act which safeguards the interests of the vendee are various paragraphs relating to the following topics: "Notice of intention to re-

take"; "Redemption"; "Compulsory resale by seller"; "Resale at option of parties"; "Proceeds of Resale". In Arizona and several other states which have adopted this law entitled "An Act Concerning Conditional Sales and to make Uniform the Law relating thereto", the conditional sales contract has been made even more than ever before to approximate a chattel mortgage. To hold that a conditional vendor has the same rights as a chattel mortgagee or any lienor within the provisions of the Act would accomplish the obvious purpose of Congress, that is to penalize the guilty and protect the innocent. At the same time the Government would not lose by such an interpretation. If the conditional vendor be held to be the "owner" his only redress is to "show cause to the contrary", and procure a return of the car, in which event the interest of the wrong-doing vendee would be forfeited to the vendor instead of to the Government, a serious objection pointed out by Judge Dooling in his opinion. On the other hand, if the vendor be held to amount to a "lienor" he has no right to a return of the car at the expense of the Government, but is paid the amount of the outstanding purchase price and the balance of the proceeds, if any, is paid in to the United States Treasury.

If our foregoing argument is sound the intervener was clearly entitled as an innocent

lienor to protection under the express terms of the Act. The original prayer of the Petition in Intervention was for the return of the automobile, or for such other relief as was just and adequate in the premises. Attention is called to the fact that upon the face of the Petition in Intervention it appears that the only equity of the conditional vendee, Jewel A. Bostick, resulted from a single initial payment of only One Hundred Fifty ($150.00) Dollars on an agreed purchase price of Seven Hundred Dollars for a used automobile. In fact depreciation has absorbed the entire initial payment to say nothing of the costs. Therefore we requested the return of the automobile upon the payment of costs. Instead of entering an order (T. of R. 29), denying the Petition of the Intervener and directing that the automobile be sold "in the usual way" we contend that error was committed in failing to direct the return of the car to Intervener after the payment of the costs to the Government or in lieu thereof failing to make provisions for the payment of the remainder of the purchase price to the Intervener out of the proceeds of the sale after the payment of costs. Because of this error we submit that the order of sale should be vacated and the automobile ordered returned to the Intervener upon payment of the costs but if this relief be not granted we urge that the order of sale be

modified so as to direct payment of the unpaid purchase price to Intervener after the payment of costs and the balance, if any, be forfeited to the Government.

Respectfully submitted,

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